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September 15, 2021

VIA ECF
Hon. Philip M. Halpern, USDJ
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Application denied without prejudice to renewal for failure to comply with this Court's Individual Practice 4.C.

The Clerk of the Court is respectfully directed to terminate the motion sequence pending at Doc. 85.

SO ORDERED.



Philip M. Halpern
United States District Judge

Dated: White Plains, New York
September 16, 2021

Re: Herbert v. Warden Harold Smith, et al.
Case #: 20-cv-6348 (PMH)

Dear Judge Halpern:

This office represents Defendants Calangelo, Ruggiero and Matis with regard to the above matter.

This Court's Memorandum Opinion & Order entered on August 2, 2021 (Dkt. 83) permitted Plaintiff to file a Second Operative Pleading within thirty days from the date of the Order.

Plaintiff filed a pleading which he designated as Second Operative Pleading and Motion for Appointment of Counsel (Dkt. 84).

I respectfully do not believe the Second Operative Pleading cures the defects outlined in the Court's decision.

As such, permission to file a Motion to Dismiss is requested, and I request until October 8, 2021, to serve said motion.

Under FRCP 15(a)(3) a response to the Second Operative Pleading would be due by September 22, 2021.

Since Plaintiff is pro se, and is incarcerated in the Sullivan County Jail, I have not requested from Plaintiff's his consent.

Regarding Plaintiff's request for Counsel, it is requested the Court deny the request as the Court has previously done. (Dkt. 82)

Respectfully yours,

DREW, DAVIDOFF & EDWARDS
LAW OFFICES, LLP


By: MICHAEL DAVIDOFF, ESQ.

MD/jb

cc: Jeremiah Herbert, Plaintiff, Pro Se
Michael F. McGuire, Sullivan County Attorney